



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

November 19, 2009

Control Number: SB/SE-05-1109-065
Expires: November 19, 2010
Impacted: IRM 5.1.8.5.1(10)
IRM 5.12.3
IRM 5.14

MEMORANDUM FOR DIRECTOR, ADVISORY, INSOLVENCY AND QUALITY
DIRECTORS, COLLECTION AREA OPERATIONS
DIRECTOR, CAMPUS FILING AND PAYMENT
COMPLIANCE
DIRECTOR, CAMPUS COMPLIANCE OPERATIONS
(CINCINNATI)

FROM: Frederick W. Schindler /s/ Frederick W. Schindler
Director, Collection Policy

SUBJECT: Reissuance of Interim Guidance for Subordinations to Factors

The purpose of this memorandum is to reissue interim guidance memorandum dated November 20, 2008, with control number: SB/SE-05-1108-053, titled Interim Guidance for Subordinations to Factors.

This Interim Guidance serves to update IRM 5.12.3.13, Subordination of Liens, as it applies to the government's lien interest in current and future accounts receivable.

The IRM revision dated 09-07-2006, regarding subordinations of accounts receivable in IRM 5.12.3.13(6) caused confusion as to its meaning and the procedures to follow. That paragraph of the IRM will be updated as follows:

Existing IRM: "A subordination of the government's lien interest in current and/or future accounts receivable to the security interest of a lender is allowable under IRC 6325(d)(1) or (2)."

New text:

- a. Granting a subordination on accounts receivable should be limited to the accounts receivable (AR) existing on the issuance date of the subordination certificate and not longer than one year with no extensions. Any request for extension must be treated and worked as a new application. All such subordinations must meet the criteria noted in IRM 5.12.3.13(1) and (2).

Note: The subordination cannot be for longer than 90 days if an in-business taxpayer has not paid the preceding quarterly trust fund tax.

- b. Documentation should identify convincingly that subordination of the government's priority will facilitate collection of the taxes due. Since periodic payments are involved, a signed installment agreement (Form 433-D) must be secured in conjunction with the subordination and will be subject to the normal termination and default provisions. This must include a requirement to make timely Federal Tax Deposits if the taxpayer has an open Form 941 filing requirement. These provisions will also apply to the subordination.
- c. The description of the assets included in the subordination must read, "all [or specific] accounts receivable belonging to [taxpayer name] in existence on mm/dd/yyyy and coming into existence prior to mm/dd/yyyy." If only specific accounts receivable are subject to a factoring agreement, describe the specific accounts receivable to be included on the subordination certificate.
- d. For cases assigned to Collection Field function (CFf) revenue officers, a complete investigation of the taxpayer's ability to pay and the TFRP investigation must be completed or in process before granting an in-business installment agreement as outlined in IRM 5.14.7. If a request to extend the subordination is anticipated, one term of the installment agreement should be to update financial information annually.
- e. For applications to subordinate to a factor on taxpayer trust fund accounts not assigned to a CFf revenue officer, Advisory will initiate a TFRP investigation and may issue an OI to CFf on cases for which field actions are necessary. These OIs, sent by Advisory, are mandatory OIs for the field. The information and any recommendations on the TFRP investigation, along with any information on an installment agreement, should be forwarded to Advisory. Advisory will follow the direction in IRM 5.7.3.2(4) regarding completing TFRPs on cases that cannot be loaded to ATFR (non-St 26 cases).

- f. The Form 669-C will also list the terms of the subordination, including termination for failure to make payments or failure to live up to the terms of the installment agreement. The factoring agent will be given written notification of the termination of the subordination on accounts receivable. Payments should be made directly from the factor to the Service, where possible.
- g. The attached forbearance agreement may be used in addition to (but not in lieu of) the Form 669-C if the taxpayer wishes additional clarification of the terms of the agreement, but it is not required by the Service.
- h. Advisory will monitor these subordinations during the period they are in effect.

If you have any questions, please feel free to contact me, or a member of your staff may contact Jon Munroe, Senior Program Analyst.

Attachment

cc: www.irs.gov

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(1). On [date], [date], [date], and [date] the Internal Revenue Service (hereinafter the Service), filed Notices of Federal Tax Liens with the Secretary of State, State of

(3). On [date] the Factor recorded a UCC financing statement with the [state name] Secretary of State, which financing statement included Taxpayer's accounts receivable as collateral for the financing .

(4). As consideration for the Service entering into this agreement, the Taxpayer agrees to pay the Service an initial payment (if applicable) in the amount of: [dollar amount written out in words then repeated in parentheses in numbers] ; to be received on [date].

(6). The installment agreement that accompanies the subordination agreement will be monitored by the AIQ – Advisory Function in conjunction with this subordination agreement and payments will be sent to:

1 Name, title, ID Number, address and phone number of office/employee to
2 whom payments will be mailed:

3 (7). If the period of the installment agreement extends beyond the period of the
4 subordination, the taxpayer shall apply for a new subordination agreement at least 60 days
5 prior to the end date of the current subordination.

6 (8). The Taxpayer further agrees to remain current in the filing and paying of all Federal
7 Taxes during the period of this agreement and will furnish proof of current Federal Tax
8 Deposits by-weekly.

9 (9). The Taxpayer further agrees to furnish to the Service each month a listing of its current
10 accounts receivable.

11 (10). The Taxpayer also agrees to identify which of its current accounts receivable
12 have been pledged to the Factor for collection by the Factor and upon which advances have
13 been made.

14 (11). The listing in (7) above and information cited in (8) above will be furnished
15 monthly to:

16 Name, title, ID Number, address and phone number of Advisor to whom
17 listing will be sent:
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19 (12). The installment agreement that accompanies this subordination agreement will
20 make reference to this subordination agreement, specifically to paragraphs (4) through (11)
21 above.

22 (13). In consideration of the foregoing, the Director agrees not to assert the Service's
23 tax lien priority under I.R.C. §§ 6323 (a) or to levy pursuant to I.R.C. § 6331 against the
24 Taxpayer's accounts receivable, which accounts are used as security for advances made by
25 the Factor to the Taxpayer prior to the termination of this agreement.

26 (14). The failure of the Taxpayer to comply with the terms set forth in paragraphs (4)
27 through (9) above will constitute a default of this agreement and default of the accompanying
28 installment agreement.

1 (15). Upon failure of the Taxpayer to comply with the terms set forth in paragraphs (4)
2 through (9) above, the Director or other authorized representative will notify the parties to this
3 agreement in writing by certified mail that a default has occurred. The Taxpayer has 30 days to
4 cure either the default in the subordination agreement or the default in the accompanying
5 installment agreement.

6 (16). If the Taxpayer does not cure the default within 30 days of the date of the
7 abovementioned letter, then this agreement is deemed terminated and the Service will no
8 longer forbear from enforcing its lien rights (including levy) against the Taxpayer's accounts
9 receivable that have *not* been pledged for advances made prior to the termination of this
10 agreement, as otherwise permitted under the Internal Revenue Code.

11 (17). The failure of the Director or other authorized representative of the Service to
12 notify the parties of any default will not constitute a waiver of either the default of the
13 installment agreement or the subordination agreement.

14 (18). Pursuant to I.R.C. § 6103(c), the Taxpayer consents to the disclosure of tax
15 return information to the Factor to the extent required to show that this agreement is in default.

16 (19). This agreement concerns only the specific accounts receivable which the
17 Taxpayer has pledged to the Factor as security for the advances made by the Factor to the
18 Taxpayer.

19 (20). Any change to the compensation to the Factor or to the Factor's security interest
20 in the Taxpayer's assets must be approved by Service or the Service will not forbear from
21 asserting its lien priority as to the changed compensation.

22
23 Signatures on Page 4, Attached
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Signature Page

Factor: Date

By: _____

Taxpayer: Date

By: _____

United States of America
Director, Advisory, Insolvency & Quality
For Internal Revenue Service, SB/SE

By: [Name], Technical Services
Advisory Group Manager